

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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to: Phil Whitworth
Internal Revenue Agent
IPG-CAM SME

from: John P. Moriarty
Chief, Branch 1
(Income Tax and Accounting)

subject: Satisfying the 90-day and 120-day window period requirements of Rev. Proc. 2011-14 for changes described in section 15.11 of the Appendix

This responds to your question asking how a taxpayer under examination, wishing to change its method of accounting for advance payments in accordance with section 15.11 of the Appendix of Rev. Proc. 2011-14, 2011-4 I.R.B. 329 (January 24, 2011), may satisfy the requirement to file a copy of the application with the national office during the 90- and 120-day window periods. You note that taxpayers changing a method of accounting under section 15.11 of the Appendix file a statement in lieu of Form 3115 and are not required to file duplicate copies of their applications with the national office. As described below, taxpayers under examination wishing to change a method of accounting for advance payments under section 15.11 of the Appendix may satisfy the requirement to file a copy of the application with the national office during the 90- and 120-day window periods by filing a copy of the statement, in lieu of the application, with the national office. If you have any questions regarding this memorandum or our conclusion, please contact Innessa Glazman at 202-622-5020.

ANALYSIS

Taxpayers that receive advance payments as defined in section 4.01 of Rev. Proc. 2004-34 may defer the inclusion of these advance payments in gross income to the next succeeding taxable year in accordance with Rev. Proc. 2004-34. Section 15.11 of the APPENDIX to Rev. Proc. 2011-14 provides procedures for taxpayers to obtain automatic consent for a change in method of accounting for certain advance payments.

Section 6.02(1)¹ of Rev. Proc. 2011-14 provides that applying for a consent to change a method of accounting is accomplished ordinarily by filing a Form 3115. However, in some cases a taxpayer may file a statement, in lieu of a Form 3115, as the application.

Section 6.02(3)(a) requires taxpayers to file an application in duplicate. The taxpayer must attach the original application to its federal income tax return implementing the change in method of accounting. In addition, the taxpayer must submit a copy of the application to the national office or to the Ogden Service Center. For this purpose, an application can be either a Form 3115 or a statement filed in lieu of a Form 3115. See section 3.01.

Section 15.11(1)(b)(2)(b) of the Appendix to Rev. Proc. 2011-14 waives the requirement to file an application on Form 3115 and authorizes a statement, in lieu of Form 3115, for certain changes. In addition, the section waives the requirement to file a duplicate application.

A taxpayer under examination generally is prohibited from using the consent provisions of Rev. Proc. 2011-14 unless it complies with one of the exceptions in section 6.03. See section 4.02(1).

Section 6.03 provides that a taxpayer that is under examination may file an application to change a method of accounting under Rev. Proc. 2011-14 if the taxpayer is within the 90-day or 120-day window as defined in sections 6.03(2) and (3)². Both the 90-day and 120-day window periods require a taxpayer to file a copy of its application with the national office or the Ogden service center as applicable. In accordance with section 3.01, a taxpayer under examination wishing to change its method of accounting for advance payments under section 15.11 of the Appendix satisfies the requirement to file a copy of the application with the national office during the 90- and 120-day window periods by filing a copy of the statement in lieu of the application with the national office. The copy must be mailed to the address specified in section 6.02(7) and state whether the taxpayer is submitting the statement under the 90-day or 120-day window. In addition, a copy of the statement must be supplied to the examining agent(s) in accordance with section 6.02(3)(c).

¹ All of the section references in this advice are to sections in Rev. Proc. 2011-14, 2011-4 I.R.B. 329 (January 24, 2011) unless specifically noted otherwise.

² Section 6.03 provides other alternative rules by which a taxpayer under examination may obtain consent to change its method of accounting. These other rules are not relevant to this discussion.